

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion to Assess and Revise
the New Regulatory Framework for Pacific Bell
and Verizon California Incorporated.

Rulemaking 01-09-001
(Filed September 6, 2001)

Order Instituting Investigation on the
Commission's Own Motion to Assess and Revise
the New Regulatory Framework for Pacific Bell
and Verizon California Incorporated.

Investigation 01-09-002
(Filed September 6, 2001)

**ASSIGNED COMMISSIONER'S RULING
REVISING THE SCHEDULE AND CLARIFYING THE SCOPE OF PHASE 3**

This ruling revises the schedule for Phase 3 and provides additional guidance regarding the scope of Phase 3.

Background

The Order instituting this proceeding contained a preliminary schedule for the entire proceeding and authorized the assigned Commissioner and assigned Administrative Law Judge (ALJ) to revise the schedule. The Order also stated that the Commission would consider in Phase 3 whether to revise those elements of NRF identified in Appendix A of the Order, and directed the assigned Commissioner to determine the exact scope of the proceeding in one or more rulings.

The current schedule for Phase 3 is as follows:

Phase 3 Schedule	
Event	Date
Comments re: Phase 3 Issues.	Opening Comments: September 20, 2002 Reply Comments: October 4, 2002
Motions for Evidentiary Hearings re: Phase 3 Issues.	October 11, 2002
Replies to Motions.	October 18, 2002
Ruling re: Phase 3 Scope, Schedule and Need for Hearing.	November, 2002
Written Testimony & Evidentiary Hearings (if necessary)*	Opening Testimony: November 18, 2002 Reply Testimony: December 9, 2002 Evidentiary Hearings: Dec. 16 – 24, 2002
Briefs re: Phase 3 Hearing Issues.	January 2003
Requests for Final Oral Arguments before the Commission.	January 2003
Final Oral Arguments. Proceeding Submitted.	February 2003
Draft Final Decision.	Spring 2003
Comments on Draft Final Decision.	Spring 2003
Final Decision.	Spring 2003

As of the date of this ruling, draft decisions in Phases 2A and 2B have not yet been issued. A draft decision in Phase 1 is awaiting Commission decision. Because the Commission's resolution of some issues in Phase 3 is likely to be informed by outcomes in Phases 1, 2A, and 2B, the current schedule for Phase 3, which requires parties to file opening comments on all Phase 3 issues on September 20, 2002, is no longer appropriate.

Discussion

The conclusion of this proceeding could be delayed substantially if the commencement of Phase 3 were to wait until final decisions are issued in

Phases 1, 2A and 2B. However, some Phase 3 issues appear to depend relatively little, if at all, on Phases 2A and 2B. Therefore, to facilitate the timely completion of this proceeding, Phase 3 will be bifurcated into Phases 3A and 3B. Phase 3A will address issues that are least dependent on records and outcomes in prior phases, and Phase 3B, which will start later, will address issues that are more dependent on records and outcomes in prior phases. ALJ Thomas is assigned to Phase 3A, and ALJ Kenney is assigned to Phase 3B.

The issues to be considered in Phases 3A and 3B and the schedules for these Phases are attached to this ruling. Any party that believes the matters to be addressed in Phase 3A are contingent on potential alternative outcomes in Phases 2A, 2B, and/or 3B should provide a detailed explanation of such contingencies in its Phase 3A opening comments. Parties should note that no evidentiary hearings are scheduled for Phase 3A. The Phase 3A issues are policy issues and it does not appear that the resolution of these matters will require adjudication of any factual issues. Any party that believes an evidentiary hearing is necessary should provide in its Phase 3A opening comments a detailed description of (1) the specific factual issues that require adjudication and (2) the facts that the party intends to present at an evidentiary hearing. Parties that wish to present the opinions of experts may do so through declarations accompanying their comments.

As set forth in the assigned Commissioner's ruling issued on December 27, 2001 (ACR), the parties that plan to participate in Phase 3 hearings, which are now anticipated to be necessary only for Phase 3B, shall meet and confer prior to

the start of evidentiary hearings for the purpose of preparing a Joint Hearing Schedule & Exhibit List that contains the following information¹:

1. Proposed witness schedule.
2. Cross-examination time estimates.
3. Witness constraints, if any.
4. Title, subject matter, and number of each exhibit, the identity of the offering party, and the sponsoring witness.

The Joint Exhibit shall be filed at least five business days prior to the start of evidentiary hearings. The hearings will be conducted in accordance with the Joint Hearing Schedule & Exhibit List unless the assigned Commissioner or assigned ALJ specify otherwise. In addition, parties should adhere to the instructions for handling hearing exhibits contained in Appendix B of the ACR.

Any party that plans to participate in the hearings without presenting written testimony (e.g., cross examination of witnesses) should file and serve notice of such participation at least 10 business days prior to the start of hearings. There is no need for parties to attend the hearings in order to be placed on the service list for this proceeding. The order instituting this proceeding provides instructions on how to be placed on the service list without attending a hearing.

¹ ACR, p. 10.

IT IS RULED that:

1. The schedule for Phase 3 of this proceeding is revised and the scope of Phase 3 is refined as set forth in the body of this ruling and the attached appendices.
2. Administrative Law Judge (ALJ) Thomas is assigned to Phase 3A, and ALJ Kenney to Phase 3B.
3. Any party that believes the matters to be addressed in Phase 3A are contingent on potential alternative outcomes in Phases 2A, 2B, and/or 3B shall provide a detailed explanation of such contingencies in its Phase 3A opening comments.
4. Any party that believes an evidentiary hearing is necessary in Phase 3A shall provide in its Phase 3A opening comments a detailed description of (i) the specific factual issues that require adjudication in Phase 3A and (ii) the facts that the party intends to present at an evidentiary hearing in Phase 3A.
5. Parties that wish to present the opinions of experts may do so through declarations accompanying their Phase 3A comments.
6. Parties shall follow the instructions regarding Phase 3 evidentiary hearings, if any, that are set forth in the body of this ruling.

Dated September 23, 2002, at San Francisco, California.

/s/ LORETTA M. LYNCH
Loretta M. Lynch
Assigned Commissioner

Phase 3A Issues		
	Issue	Reference
1.	<p>Timing of Price Cap Advice Letter: Phase 3A will address whether Pacific and Verizon should file their annual price cap advice letters on September 1st instead of October 1st as is currently the case. The purpose of requiring the advice letters to be filed one month earlier would be to provide Commission staff with adequate time to process the advice letters prior to the implementation of new rates on January 1st of the following year.</p>	OIR 01-09-001 & OII 01-09-002, Appendix A, p. A-8.
2.	<p>Criteria and Procedures for Revising Prices: Phase 3A will address what criteria and procedures (other than those resolved in R.98-07-038) should be used to revise (1) prices for services in Categories 1, 2 and 3; and (2) price floors and ceilings for Category 2 services. Topics that are within the scope of this proceeding include the criteria and procedures (other than those resolved in R.98-07-038) that should be used to set and revise prices for (1) promotional offerings, (2) bundled offerings, and (3) customer-specific contracts. Parties should address whether the current criteria and procedures are adequate, or if the criteria and procedures need to be refined or replaced. Parties are encouraged to address whether and how parties besides Pacific and Verizon may propose price changes. Issues that are beyond the scope of this proceeding include the following: (1) changes to the existing definitions of Category 1, 2, and 3; (2) changes to the existing categorization of services; (3) changes to existing prices, price caps, and price floors; and (4) changes to Commission review procedures resolved in R.98-07-038.</p> <p>In connection with the foregoing issues, parties are invited to address the following questions:</p> <p>(a) What criteria, procedures and rules should apply to requests for changes to ceiling prices and actual prices for Category 2 services? Who should be permitted to make such requests? Should service-specific price</p>	OIR 01-09-001 & OII 01-09-002, Appendix A, pp. A-8 and A-9, as further explained in the 12/27/01 ACR.

Phase 3A Issues		
	<p>changes be made revenue neutral? If so, how should this be accomplished? If there are instances in which revenue neutrality should be required, are there instances in which revenue neutrality should not be required?</p> <p>(b) Should the current rules and procedures for adjusting price floors be changed? If so, how?</p> <p>(c) What criteria, procedures, and rules should apply to requests to change Category 3 ceiling and actual prices?</p> <p>(d) What criteria should apply to deciding whether Category 3 services are accounted for above- or below-the-line?</p> <p>(e) What criteria, rules, and procedures should apply to requests for approval of bundled offerings? Should any special rules apply when the bundle includes services that are not rate-regulated by the CPUC, such as wireless services? What terms and conditions should apply when the bundle includes services that, when sold separately, have different applicable terms and conditions (e.g., regarding early termination charges).</p> <p>(f) What criteria, rules and procedures should apply to requests for promotional offerings?</p> <p>(g) What criteria, rules and procedures should apply to requests for customer-specific contracts? For which types of customers should such contracts be allowed?</p> <p>The above questions are provided to clarify and highlight certain issues to be addressed in Phase 3A. They are not meant to subtract any issues from those identified in the Order instituting this proceeding or the 12/27/01 ACR. To the extent the above questions add issues that are not clearly delineated in the Order or 12/27/01 ACR, then these questions will be interpreted as supplementing, i.e., broadening, the scope of the proceeding.</p>	

Phase 3B Issues		
	Issue	Reference
1.	<p>Price-Cap Index: Phase 3B will address whether to reinstate the price-cap index, continue the suspension of the index, or eliminate it altogether. Parties should address what criteria (e.g., the state of competition in the relevant markets) the Commission should use to determine which course of action to take. Any party that proposes a specific course of action should provide adequate information for the Commission to adopt the proposal. For example, any proposal to reinstate the price-cap index should include information about the appropriate inflation and productivity components of the index. Similarly, any proposal to eliminate the price-cap index should demonstrate that the price-cap index is unnecessary (e.g., competitive conditions warrant its elimination), and that the proposal, if adopted, would produce rates that are just and reasonable for all customers.</p>	OIR 01-09-001 & OII 01-09-002, Appendix A, pp. A-4 and A-5.
2.	<p>LE Factor Mechanism: Phase 3B will address whether to retain the LE factor mechanism adopted in D.98-10-026, modify the mechanism, or eliminate it on a prospective basis. The Commission's focus will be on the formulation of policy regarding the regulatory treatment for "exogenous costs," and not whether any particular cost should be included or excluded in rates. Accordingly, the Commission will not consider the addition of any new LE factors or the elimination of any existing LE factors or Z-factors. Parties may address whether and how the LE factor mechanism should be revised to provide an opportunity for parties other than the utilities to propose LE factors. In addressing this matter, parties should identify who should be eligible to propose an LE factor and the procedure they would use to do so.</p>	OIR 01-09-001 & OII 01-09-002, Appendix A, pp. A-5 and A-6.

Phase 3B Issues		
3.	<p>Earnings Sharing Mechanism: Phase 3B will address whether to eliminate the earnings sharing mechanism, continue the suspension of the sharing mechanism, or reinstate sharing. Parties should address what criteria (e.g., the state of competition in the relevant markets) should be used to determine whether sharing should be eliminated, suspended, or reinstated. Any party that recommends the reinstatement of sharing should describe in detail the sharing mechanism that should be reinstated, including (1) the appropriate benchmark ROR; (2) the appropriate sharing formula (e.g., 50/50 sharing above the benchmark ROR); (3) the specific costs and revenues included and/or excluded from the sharing mechanism; (4) which services should have their prices adjusted to reflect sharable earnings; and (5) whether it is appropriate to have graduated sharing like that adopted in D.94-06-011. Any party that recommends the elimination of earnings sharing mechanism should describe in detail whether the relevant markets are sufficiently competitive so as to obviate the need for the sharing mechanism.</p>	OIR 01-09-001 & OII 01-09-002, Appendix A, pp. A-6 and A-7.
4.	<p>Gain on Sale: Phase 3B will address how gains from the sale of utility assets should be treated under NRF. Any party that recommends that ratepayers receive some or all of the gains should specify the mechanism for doing so. The Commission will not address in this proceeding issues regarding the Commission's authority to allocate gains to ratepayers, since the Commission's authority to do so is well established.</p>	OIR 01-09-001 & OII 01-09-002, Appendix A, pp. A-7 and A-8.
5.	<p>Audit Findings and Recommendations: In Phase 3B, parties may propose revisions to NRF based on the results of the Pacific and Verizon audits. Any party that proposes such a revision must demonstrate a connection between the proposed revision and the results of the audits. Parties will not have an opportunity in Phase 3 to litigate issues of fact regarding the audits. All litigation of factual issues pertaining to the audits must occur in earlier phases.</p>	OIR 01-09-001 & OII 01-09-002, Appendix A, pp. A-9 and A-10.

Phase 3B Issues		
6.	Revisions to NRF Monitoring Reports: Phase 3B will address whether, and to what extent, the NRF monitoring reports should be revised. Any party that proposes new or revised monitoring reports should demonstrate how its proposal would enhance the Commission's ability to monitor the seven NRF goals set forth in D.89-10-031. Any party that proposes to eliminate a monitoring report should demonstrate why doing so would not detract from the Commission's ability to monitor the seven NRF goals.	OIR 01-09-001 & OII 01-09-002, Appendix A, p. A-10.
7.	Service Quality: Phase 3B will address whether and how NRF should be revised to achieve the Commission's goal of high-quality service. Parties may recommend revisions to NRF in Phase 3B that are based on the record developed in Phase 2B regarding how service quality has fared under NRF. Parties may also offer recommendations in Phase 3B regarding how NRF should be revised to promote the availability of high quality services, such as a system of financial carrots and sticks tied to measurements of service quality. There will not be an opportunity in Phase 3B to litigate issues of fact regarding the quality of service provided by Pacific and Verizon. All litigation of factual issues pertaining to service quality must occur in Phase 2B.	OIR 01-09-001 & OII 01-09-002, Appendix A, pp. A-10 and A-11.
8.	Next NRF Review: Parties may present proposals in Phase 3B regarding (1) what guidance the Commission should provide about the issues that should be addressed in the next triennial review, and (2) the procedures that should be established to provide parties with an opportunity to offer input regarding the scope of the next triennial review.	OIR 01-09-001 & OII 01-09-002, Appendix A, pp. A-11.
9.	Directory Revenues: Phase 3B will address issues associated with the regulatory treatment of Yellow Page revenues under NRF.	Assigned Commissioner's Ruling issued on December 27, 2001, pp. 4 – 5.

Phase 3B Issues		
10.	Continued Submission of Service Quality (SQ) Monitoring Reports Specified in D.00-03-021: The Draft Decision issued in Phase 1 designates Phase 3 as the venue for considering ORA's proposal to require Verizon to submit the SQ monitoring reports specified in D.00-03-021 after the requirement ends in 2004. If this matter is found in the final Phase 1 decision issued by the Commission, parties should address this matter in Phase 3B.	Phase 1 Draft Decision, Ordering Paragraph 2.
11.	Deterring Utilities from Submitting Inaccurate Information: The Draft Decision issued in Phase 1 invites parties to submit proposals in Phase 3 for revising NRF in ways that would deter utilities from submitting inaccurate information. If this matter is found in the final Phase 1 decision, parties should address this matter in Phase 3B.	Phase 1 Draft Decision, Ordering Paragraph 16.
12.	Excessive Earnings: The Draft Decision issued in Phase 1 states that the Commission will address in Phase 3 issues associated with Verizon's potentially excessive earnings. If this matter is found in the final Phase 1 decision, parties should address this matter in Phase 3B.	Phase 1 Draft Decision, Ordering Paragraph 19.

Phase 3A Schedule	
Event	Date
Written Comments re: Phase 3A Issues	Opening Comments: October 31, 2002 Reply Comments: Nov. 26, 2002
Draft Decision re: Phase 3A	February 2002
Final Decision re: Phase 3A	March 2002

Phase 3B Schedule	
Event	Date
Written Testimony re: Phase 3B Issues	Opening Testimony: January 24, 2003 Reply Testimony: February 28, 2003
Motions to Strike	Motions to Strike: March 5, 2003 Replies to Motions: March 11, 2003
Evidentiary Hearings	March 24–April 8, 2003
Briefs re: Phase 3B Issues	Opening Briefs: April 25, 2003 Reply Briefs: May 9, 2003
Requests for Final Oral Arguments before the Commission.	April 25, 2003
Final Oral Arguments. Proceeding Submitted.	May 2003
Draft Decision re: Phase 3B	July 2003

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Assigned Commissioner's Ruling Revising the Schedule and Clarifying the Scope of Phase 3 on all parties of record in this proceeding or their attorneys of record.

Dated September 23, 2002, at San Francisco, California.

/s/ TERESITA C. GALLARDO
Teresita C. Gallardo

N O T I C E

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